THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL W. KONDRATUK

Appeal No. 96-0036
Application 08/012,503[1]

ON BRIEF

Before CALVERT, LYDDANE and McQUADE, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the examiner's refusal to allow claims 1 and 5. These claims were finally rejected together with claims 2 to 4, but the examiner indicates in the answer that the latter would be allowable if rewritten in independent form. Claims 6 to 10, the other claims in the application, are allowed.

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[1] Application for patent filed February 2, 1993.

Appealed claims 1 and 5 read as follows:

1. A sash latch assembly for use with a movable window having a window sash and a window sill, said latch assembly comprising:

a keeper mounted on said window:

a latch housing mounted on said window sill;

a handle mounted within said latch housing for rotation about a handle axis between an unlocked position and a locked position;

a bolt mounted within said latch housing for rotation about a bolt axis;

said bolt having a cam surface and a keeper pulling surface, wherein rotation of said bolt contacts said keeper with said keeper pulling surface, moving said keeper into said latch housing when said handle is moved into said locked position;

link means for connecting said handle to said bolt and for converting rotational motion of said handle to rotational motion of said bolt; and

a spring fixedly held within said latch housing such that, when said handle is rotated to said unlocked position, said spring abuts said cam surface so as to maintain said bolt in a fully rotated position, thereby increasing the range within which said bolt can capture said keeper.

5. The latch assembly of claim 1 wherein said cam surface of said bolt includes a detent surface which abuts said spring when said spring is at its maximum energy state and an adjacent stabilizing surface[2] which abuts said spring when said spring is at its minimum energy state, said minimum energy state corresponding to said fully rotated position of said bolt.

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[2] The term "stabilizing surface" does not appear to have antecedent basis in the specification, as required by 37 CFR § 1.75(d)(1).

The reference relied upon in the final rejection is:

Paulson et al. (Paulson) U.K. Application	2,170,856	Aug. 13, 1986

Claims 1 and 5 stand finally rejected under 35 U.S.C. § 102(b) as anticipated by the U.K. Application (hereinafter "U.K.").

The examiner read claims 1 and 5 on U.K. thus (answer, pp. 3-4):

> The U.K. '856 reference teaches a sash latch comprising a keeper 28,30, latch housing 32, latch handle 36, bolt means 42, leaf spring 72 and link means 40,46 for connecting the handle and bolt. The bolt also defines multiple finctional [sic, functional] surfaces including a pulling surface 80,82 for pulling the keeper into the latch housing, aligning the casings for locking. The leaf spring 72 abuts a cam surface of the bolt when in fully rotated position, as shown schematically in Fig. 4 at 78, and further, abuts a cam detent surface when in a locked position, as shown in Fig. 2 at 76.

Considering first claim 1, appellant does not question the examiner's reading of the claim on the reference, except for the spring recited in the last paragraph of the claim. He contends that U.K. does not anticipate the claim because spring 72 of U.K. does not "maintain said bolt in a fully rotated position," as claimed. The examiner's response to this argument, is, as far as we can tell from the answer (p. 4), that U.K. anticipates the claim because the quoted language is not a structural limitation.

In order to anticipate a claim, a reference must disclose, either expressly or under principles of inherency, each and every element of the claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed, 468 U.S. 1228 (1984). In the present case, we do not agree with the examiner that the recitation "so as to maintain said bolt in a fully rotated position" may be ignored in determining whether U.K. anticipates claim 1, since this expression is not merely a statement of intended operation or result, but rather defines a structural relationship between the spring and cam surface. Accordingly, U.K. does not anticipate claim 1 unless this relationship is found to be present, expressly or inherently, in the apparatus disclosed by U.K..

Appellant's argument as to this issue is as follows (brief, pp. 4-5):

> As indicated at page 2, lines 77-85, and as illustrated in FIG. 4, the spring of U.K. '856 is positioned to impart a rightward force upon the bolt. In addition to the rightward force as shown in FIG. 4, the force applied by the leaf spring force must also include a downward component. The downward component results from the configuration of the spring with respect to the bolt surface, i.e. the leaf spring must impart a force radially with respect to the cam surface. The vector force, resulting from the rightward and downward forces, imparts a counter clockwise torque upon the bolt, tending to rotate the bolt into the locked position rather than a fully opened position. Since the spring and bolt surface of U.K. '856 are not configured to maintain the bolt

in a fully rotated position, claim 1 patentably distinguishes over U.K. '856.

After fully considering this argument in relation to the U.K. reference's disclosure, we conclude that the spring 72 of the U.K. latch would inherently maintain the bolt 42 in the "fully rotated" unlocked position shown in Fig. 4, and therefore that U.K. anticipates claim 1. Appellant's argument might be correct if bolt 42 rotated about a fixed point, i.e., if there were no slot 48, but in the U.K. apparatus it is the link means 40 which rotates about a fixed point 38, and when bolt 42 rotates, it also must move laterally, as shown in Figs. 4 to 9. In particular, when the bolt 42 first rotates away from the Fig. 4 unlocked position to the Fig. 5 position, it shifts slightly to the left, as disclosed at page 2, lines 126-129, and as can be seen by comparing Figs. 4 and 5. Since this shifting is in opposition to the force 78 exerted by spring 72, it is evident that spring 72 inherently would tend to maintain the bolt 42 in the Fig. 4 ("fully rotated") position.

The fact that the force exerted by spring 72 may be radial (i.e., normal) to the cam surface of the bolt 42, as argued by appellant, does not change this conclusion. Even though the force vector might be somewhat downward and to the right, rather than horizontally to the right as shown at 78,

any counterclockwise torque thereby applied to the bolt at the point of abutment of the spring would not cause rotation of the bolt because, as discussed above, the bolt could not rotate without at the same time moving to the left, against the force of the spring. Also, it appears that any counterclockwise torque exerted on the bolt 42 would be negated by the fact that the spring force would also exert a clockwise torque, via pivot 46, on the link means 40. Since the link means 40 must be rotated counterclockwise in order to move away from the Fig. 4 ("fully rotated") position, any such clockwise torque indirectly exerted on the link means 40 by spring 72 would likewise tend to inherently maintain bolt 42 in the fully rotated, unlocked position.

We will therefore affirm the rejection of claim 1.

Appellant states on page 5 of his brief that claim 5 "patentably distinguishes over U.K. '856 by virtue of its dependence on claim 1, as well as by additional patentable limitations." However, since appellant groups claims 1 and 5 together in part V of his brief, and presents no arguments as to why the "additional patentable limitations" would render claim 5 separately patentable, claim 5 will fall with claim 1.

Conclusion

The examiner's decision to reject claims 1 and 5 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

AFFIRMED

IAN A. CALVERT)
Administrative Patent Judge)
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WILLIAM E. LYDDANE) BOARD OF PATENT
Administrative Patent Judge) APPEALS
) AND
) INTERFERENCES
)
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